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A Congressman talks to the
CIA Senior Seminar, Nov. 14, 1973

14 Sept 84
Rob Simmons

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OVERSIGHT OR OVERLOOK: CONGRESS AND THE U.S. INTELLIGENCE AGENCIES

Representative Lucien N. Nedzi (D-Mich.)

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I have entitled my notes this morning "Oversight or Overlook: Congress and the U.S. Intelligence Agencies."

"Oversight?" or "Overlook?"

To some extent this is a tongue-in-cheek characterization, but it is essentially an appropriate, fundamental question.

Indeed, it is a bit unsettling that 26 years after the passage of the National Security Act the scope of *real* Congressional oversight, as opposed to nominal Congressional oversight, remains unformed and unclear.

It is a sobering experience for me, as Chairman of the House Intelligence Subcommittee, to find our Subcommittee still in the process of defining ourselves, still exploring (or worse yet, just beginning to explore) what we can do and what we must do.

In Theory

There is inevitably a contradiction between needing to have more and more information to run our *open society*, and needing secret intelligence in our effort to *survive* as an open society.

I am sure we all agree on the fundamental assumptions:

— The secret aspects of intelligence cannot be dispensed with in their entirety.

— Over \$80 billion of our annual federal budget goes to defense, and the impact of this expenditure is obvious.

— The question of how much defense money we spend and how we spend it is basically determined by our assessment of the capabilities and intentions of potential enemies. This, in turn, depends on intelligence.

It is beyond argument that an effective intelligence system is critical to our national security. The *limits* we place on intelligence gatherers and intelligence users *are* what the discussion should be about.

Obviously, there is emphasis on getting the most information quickly and clearly to those who must make the critical decisions: The President, the Secretary of State, the Secretary of Defense, and the National Security Council.

There must also be an unrelenting effort which seeks to insure that those persons do not abuse the great power of the intelligence agencies and that the agencies themselves do not stray from their responsibilities.

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Oversight

In my judgment, there are unsolved problems of *accountability* as related to the intelligence community, the military, and the executive branch.

Major decisions *have been* made and perhaps are still being made on the basis of information kept not only from the public but from the Congress. Indeed, there have been *decisions* made which should have been cleared with the Congress but weren't.

I believe accountability can be improved without doing damage to the national security.

In theory, the C.I.A., the N.S.A., the D.I.A. and the other intelligence arms are accountable to Congress and Congress is accountable to the people.

But what is the *practice*? Well, not as good as it should be.

Since the *product* of the intelligence community is used by the executive, there is naturally a judgment made by the users on the quality of the product. This provides a kind of "executive oversight."

However, merely using the product does not shield us from wrangling. The recent hearings we held on the "Alleged C.I.A. Involvement in Watergate," and the recommendations we made, reminded us that we cannot insure against wrongdoing merely by statutory language, no matter how carefully designed.

We must rely on a *sense of propriety* in the White House and in the agencies themselves.

When that sense of propriety is absent, or fuzzed over, then we are in trouble.

Congressional oversight, in any event, must be improved.

Examples of Shortfall in Oversight

Two or three brief examples of shortfall in oversight should be sufficient to make the point:

(A) A substantial question has to be raised about the scope and depth of Congressional oversight when it is revealed that the Senate C.I.A. Subcommittee did not meet at all in 1971 or 1972.

(B) When I was appointed chairman of the five-man House Intelligence Subcommittee, I was aware of public estimates that the intelligence community spends several billion dollars annually and has tens of thousands of employees.

I wondered how a Subcommittee of five members, all busy with the many time-consuming duties of high-seniority members, plus two ex-officio members, plus a small, two-man, part-time staff, could cope with anything so formidable in size, talent, and variety.

To ask the question is at least to be free of illusions.

(C) As my third example, I'll simply direct your attention to the N.S.A. Has that agency ever had a real, thorough review? Has the D.I.A., for that matter?

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A Changing Mood in Congress

In my view, a vigorous exercise of Congressional oversight would be a good thing for the Congress itself, the Executive, the agencies, and the public interest.

If we aren't vigorous in the short run, we aren't doing anybody any favors, for problems will pile up in the long run.

If we don't do the job now under the present structure—and the jury is still out—then something quite different may be established, for the mood of Congress is undergoing a change.

Congress, and public opinion, is in a more challenging mood, not only on defense matters, but on intelligence. The average age and tenure of members has also declined substantially. This signals a departure from previous assumptions, and predilections.

There are more Congressmen and more Senators who want to get into the act. In this they reflect the Congressional mood and the public mood. *Inaction* on our part would feed these trends; responsible, deliberate action would quiet many of the fires of discontent.

Further, there seems to be some public concern, fed by Watergate, that a so-called "C.I.A. mentality" has taken hold in the Executive. That is, that an Executive accustomed to approving "extra-legal" activity abroad became slack in guarding against extra-legal activity at home. . . . There are philosophical, moral, and political considerations here that call for our reflection.

My Various Constituencies

If I may, I'd like to personalize things for a moment or two, so that you can understand me better.

For one thing, you should understand that while you are full-timers, I am of necessity a part-timer in the intelligence business. You should also understand that the pressures on us are different.

The way I see it, I have not one constituency but several constituencies.

I have the constituency of my Subcommittee members, all of whom are senior to me and must be accorded respect and a proper measure of deference.

I have the constituency of my colleagues in the House, who feel, at least in some degree, that I represent them generally and even in individual conscience in dealing with the various intelligence agencies.

Then I have the constituency of the several agencies, whose interests and problems I must be sensitive to and in a sense represent with my Subcommittee, full Committee, and House colleagues.

Finally, I have the constituency of the 467,000 people of the 14th Congressional District of Michigan. I must, for example, take care of my oldtimers who desperately need an increase in social security benefits. I've got to stay in close touch with political developments in all of the several communities of my district, be sensitive and responsive to hopes and fears, enduring problems, and future problems. At times, as in the 1972 campaign, when bussing, the Democratic Na-

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tional Convention quota system, and the McGovern debacle threatened disaster, I had to devote months of my time surviving bitterly close primary and general election campaigns.

Nevertheless, I am fortunate to have a veteran and able personal staff both in Washington and Detroit. This personal staff does relieve me of much of the Congressional office burden, and I have been able to perhaps spend more time on intelligence than most of my colleagues.

I believe the Subcommittee and I have made some deep probes and are becoming better acquainted with each other and with the agencies. I also believe we have laid the groundwork for the enlargement of our Subcommittee staff.

Possible New Directions

As you know, the House Intelligence Subcommittee recently completed an in-depth probe on "Possible C.I.A. Involvement in the Watergate and Ellsberg Matters." Last year we looked into that basket of eels, the classification and overclassification of documents.

These were probably the two most extensive inquiries made by an Intelligence Subcommittee since the 1947 Act.

I am satisfied with the results. As a beginning.

But there remain many questions, some practical, some philosophical.

For example, how much detail should Congress receive? Should we limit ourselves to the budget, or should we get into personnel, into policy, into operations?

Second, there are four Subcommittees—two each in the House and Senate—charged with oversight responsibility.

I must concede that the "interaction" between them has not been substantial. Indeed, it has been barely visible.

To be candid about it, the four Subcommittees can be likened to four small principalities, not at war with one another but going their independent ways. The situation reminds me of a Greek dialogue, where there isn't point and counterpoint, question and answer, but a preoccupation with building parallel pyramids, each building away furiously. If this analogy is accurate, I think our House Intelligence Subcommittee has built the highest pyramid thus far.

Third, we are well aware of certain axioms of government and public administration, namely that regulatory agencies tend to take on the coloration of the industries they are supposed to regulate, and that relationships between part-time commissions and full-time executive directors tend to be weighted in favor of the vigorous full-time executive director. There is an aspect of this in our relationship and also an inevitable aspect of "joint enterprise" on some issues. Nevertheless, I believe a Congressional subcommittee can be a joint enterpriser on one matter and a responsible critic on another.

Fourth, there is always the possibility of a "moral crunch", the possibility that if you know too much, if you don't side-step the moral ambiguities of a particular intelligence operation, you will come up against some deeply troubling decisions.

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There is such a thing as that certain glow, that pleasant vibration, which flows to a Congressman allowed the privilege of being "on the inside," to be privy to fresh and sensitive information. Some are quite satisfied to have a corner of the rug lifted and to be given a peek, and that is enough. If I may paraphrase, it is my understanding that some members of Congress in the last 26 years have said, in effect, "I approve in general. I don't want to be told details. Go to it."

This is understandable and can be explained in various ways:

Trust, Business, Laziness. The fear of moral involvement.

It may be simply that Congressmen *trust* the agencies, respect their track record, respect their expertise and command of detail.

It may be that a member is too busy, or too ill or lazy, to summon the intellectual discipline to really review things. So the easy way out is not to give oneself the rugged assignment.

Finally, there is the worrisome complication of being morally involved, compromised, silenced. It is, for example, easier for some ambassadors to function without knowing details of what the CIA country chief is doing. Likewise, a Congressional committee. For if you know a sensitive policy or operation, you may have to proceed to the question of your responsibilities to your Congressional colleagues and to what you perceive to be the national interest. And if you deeply disagree, are you to remain silent? Or protest privately? Or publicly? It's not an easy question.

The Optimistic Side

I don't want to paint too gloomy a picture.

We do have advantages.

We have proven, in the work of the House Intelligence Subcommittee, that we can be probing and responsible and keep our findings leak-proof and closely held.

Second, we have a flexibility of resources. Chairman F. Edward Herbert, one of the veteran and major figures of the House, has been fully cooperative and supportive.

Third, we have flexibility in picking our spots, using the power of the purse and of subpoena.

Fourth, we do not perceive ourselves as being in a tense or rigid adversary relationship with the various intelligence agencies. All, without exception, have been forthcoming and cooperative.

Fifth, we have the rare and limited privilege of having an *overview* of not only one agency but all agencies. This is quite an advantage in a field where compartmentalization is the norm. We could, I suppose, even play one agency off against another.

Finally, we have the advantage of being relatively informal in approach, of being able to change directions, of not being hemmed in by structure or precedent.

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Finale

We are, in the end, you and I, jointly trying to preserve the fundamental processes of our free society.

It will help if we understand each other. And so I'll close with a personal recollection.

I recall a meeting I had here with then-director Richard Helms in which I told him, "you've been very cooperative in answering my questions. The trouble is I'm not sure I'm asking the right questions."

"You're getting there," he smiled, "You're getting there."

Well, I hope I *am* getting there, and if I'm not, I'd like your help.

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To be a politician is but to feign ignorance of what you know well, pretend knowledge of what you are totally ignorant, decline to listen to what you hear, attempt what is beyond your capacity, hide what ought to be exposed, appear profound when you are dull-witted, and to justify ignoble means by claiming admirable ends. Pierre Augustin Caron de Beaumarchais, Marriage of Figaro (1778)

CIA AND THE CONGRESS

John M. Maury

Beaumarchais' appraisal of politicians is widely shared these days, and perhaps nowhere more than among members of Executive Agencies who have come to look upon Congressmen and their endless investigations and criticisms as irreconcilable enemies of the bureaucratic establishment. In the case of agencies involved in sensitive questions of national security, the problem is intensified by concern among the bureaucrats that Congress will, perhaps inadvertently, lack proper discretion in the handling of highly classified material to which it demands access. On the other hand, the Congress instinctively suspects that whenever an Executive Agency pleads national security as an excuse for withholding information, the purpose is merely to cover up mischief or inefficiency.

In the case of an agency involved in foreign intelligence, the problem is further complicated by traditional American squeamishness about the morality of spying in peacetime—reading other people's mail, or subverting other people's loyalties. And sometimes our own poor judgment or clumsy tradecraft have contributed to Congressional suspicions that many of our activities are counter-productive or create unnecessary irritants in the nation's foreign relations.

Our problem then is whether an organization like CIA can operate in American society without being so open as to be professionally ineffective, or so secret as to be politically unacceptable.

In the early days of the Agency this problem rarely arose. The Agency was created at a time when the nation was haunted by the disastrous lack of warning of the Pearl Harbor attack, when we were becoming dimly aware of the nature and scope of the post-war Soviet threat and implications of the Cold War, and when, for the first time in our history, we found ourselves with no staunch and strong ally standing between us and a possible major adversary. All of this, coupled with our worldwide security commitments—military, economic, and political—made it obvious that if we were to bear our newly acquired responsibilities in the world and defend our national interests, we would need a far more sophisticated set of eyes and ears abroad than anything we had enjoyed in the past.

In the view of the general public, and of the Congress which in the main reflected the public attitude, a national intelligence service in those days was

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